

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:F:BOS:POSTF-114743-02

BJLaterman

date:

5/24/02

to:

[REDACTED], Team Manager
LMSB/MCT Group [REDACTED]

from:

Associate Area Counsel, Boston
CC:LMSB:FS:Boston

subject:

[REDACTED] Inc. & Subsidiaries; [REDACTED] Inc. & Subsidiaries and
[REDACTED] Inc. & Subsidiaries
Forms 872
Taxable Years [REDACTED], [REDACTED] and [REDACTED]

This is in response to your request dated March 11, 2002 that we give advice regarding extending the statute of limitations for the above-mentioned consolidated groups' [REDACTED] and [REDACTED] taxable years. This memorandum should not be cited as precedent.

[REDACTED] Inc. (EIN [REDACTED]), a Delaware corporation, was the parent of an affiliated group of corporations which filed a consolidated federal income tax return for the taxable year [REDACTED]. [REDACTED] Inc. (EIN [REDACTED]) is a Delaware corporation which was incorporated on [REDACTED]. All of the issued and outstanding stock of both [REDACTED] Inc. and [REDACTED] Inc. was owned by [REDACTED] a foreign corporation. Subsequent to its incorporation, [REDACTED] Inc. acquired from [REDACTED] (by purchase) the stock of [REDACTED] Inc. After the acquisition, [REDACTED] Inc. and its subsidiaries filed as members of the [REDACTED] Inc. and Subsidiaries consolidated group's [REDACTED] federal income return.

On or about [REDACTED] (effective [REDACTED]) : (1) [REDACTED] Inc. changed its name to [REDACTED] Inc.; and (2) [REDACTED] Inc. changed its name to [REDACTED] Inc. The [REDACTED] consolidated federal income tax return filed by [REDACTED] Inc. and Subsidiaries F/K/A [REDACTED] Inc. and Subsidiaries included [REDACTED] Inc. and its subsidiaries. You are seeking to extend the statute for the consolidated return filed by (1) [REDACTED] Inc. & Subsidiaries for [REDACTED]; (2) [REDACTED] Inc. & Subsidiaries for [REDACTED]; and (3) [REDACTED] Inc. & Subsidiaries for [REDACTED].

Generally, the common parent, with certain exceptions not applicable here, is the sole agent for each member of the group, duly authorized to act in its own name in all matters related to the tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent in its name will give waivers, and any waiver so given, shall be considered as having also been given or executed by each subsidiary. Treas. Reg. § 1.1502-77(a). Thus, generally the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Treas. Reg. § 1.1502-77(a). Furthermore, the provisions of Treas. Reg. § 1.1502-77(a) shall apply whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time.

Treas.Reg. § 1.1502-77(c) provides that, unless the District Director agrees to the contrary, an agreement entered into by the common parent extending the time within which an assessment may be made in respect to the tax for a consolidated return year, shall be applicable to each corporation which was a member of the group during any part of such taxable year. The common parent and each subsidiary, which was a member of the consolidated group during any part of the consolidated return year, is severally liable for the tax for such year. Treas. Reg. § 1.1502-6(a).

Temporary Regulation §1.1502-77T(a)(4) provides for agents if the common parent ceases to be the common parent of the consolidated group, whether or not the consolidated group remains in existence. Pursuant to Temporary Regulations §1.1502-77(T)(a)(4)(i), an agent for the group is "the common parent of the group for all or any part of the year to which the notice or waiver applies." Temporary Regulation §1.1502-77T(a)(4) is applicable to waivers of the statute of limitations for taxable years for which the due date without extensions of the consolidated return is after September 7, 1988. Temp.Reg. §1.1502-77T(b). Therefore, said regulations provision is applicable in this case.

The [REDACTED] former common parent taxpayer, [REDACTED] Inc., now known as [REDACTED] Inc., is still in existence and, therefore, it is the agent for the consolidated group in existence for the taxable year [REDACTED] under the provisions of Treas.Reg. §1.1502-77T(a)(4)(i). The caption on the Form 872 for [REDACTED] should be: [REDACTED] Inc.(EIN) formerly known as [REDACTED] Inc.(EIN) & Subsidiaries.* At the bottom of the page you should add: * [REDACTED] Inc. formerly known as [REDACTED] Inc. has executed the Form 872 as agent for the [REDACTED] Inc. & Subsidiaries consolidated group for its [REDACTED] taxable year.

Therefore, based on the facts¹ provided we conclude that a Form 872 executed by a current officer of [REDACTED] Inc., the still existing parent of the group for the [REDACTED] taxable year, will extend the period for assessment of tax for said taxable year.

The [REDACTED] common parent, [REDACTED] Inc., now known as [REDACTED] Inc., is still in existence and, therefore, it is the agent for the consolidated group (in existence in [REDACTED] under the provisions of Treas. Reg. § 1.1502-77(a)). The caption on the Form 872 should be: [REDACTED] Inc. (EIN) formerly known as [REDACTED] Inc. (EIN) & Subsidiaries.* At the bottom of the page you should add: * [REDACTED] Inc. formerly known as [REDACTED] Inc. has executed the Form 872 as agent for the [REDACTED] Inc. & Subsidiaries consolidated group for its [REDACTED] taxable year. Therefore, based on the facts² provided we conclude that a Form 872 executed by a current officer of [REDACTED] Inc., the still existing common parent of the group for the [REDACTED] taxable year, will extend the period of assessment for said taxable year.

We regard to [REDACTED], pursuant to the provisions of Treas. Reg. § 1.1502-77(a), [REDACTED] Inc. is the agent for the consolidated group in existence in [REDACTED]. The caption on the Form 872 should be [REDACTED] Inc. & Subsidiaries.* At the bottom of the page you should add: [REDACTED] Inc. has executed the Form 872 as agent for the [REDACTED] Inc. & Subsidiaries consolidated group for its [REDACTED] taxable year. Therefore, a Form 872 executed by a current officer of [REDACTED] Inc. will extend the statute of limitations for the [REDACTED] taxable year.

As a final matter with regard to the statute extensions, we recommend that you pay strict attention to the rules set forth in the Internal Revenue Manual (IRM). Specifically, IRM 121.2.22.3 requires use of Letter 907 (DO) to solicit the Form 872, and IRM 121.2.22.4.2 requires use of Letter 929 (DO) to return the signed Form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer the authorized manager should

¹ We note that our advice is based on our understanding that [REDACTED] Inc. formerly known as [REDACTED] Inc. from whom you will solicit the extension is the same corporation that was the common parent for [REDACTED].

² We note that our advice is based on our understanding that [REDACTED] Inc. formerly known as [REDACTED] Inc. from whom you will solicit the extension is the same corporation that was the common parent for [REDACTED].

promptly sign and date it in accordance with Treas.Reg. §301.6501(c)-1(d) and IRM 121.2.22.3. The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Also, please note that §3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. §6501(c)(4)(B), requires the Internal Revenue Service to advise taxpayers of their right to refuse to extend the limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Internal Revenue Service requests that the taxpayer extend the limitations period. To satisfy the requirement, Publication 1035, "Extending the Tax Assessment Period," must be given when you solicit the statute extension.

Furthermore, we note that Treas.Reg §1.1502-77(a) further provides that the common parent as the sole agent for the group will give waivers, give bonds and execute closing agreements, offers in compromise and other documents. Therefore, the proper party to execute Reports (F-4549) and Waivers (F-870) for [REDACTED] is [REDACTED] Inc. formerly known as [REDACTED] Inc.; for [REDACTED] is [REDACTED] Inc. formerly known as [REDACTED] Inc.; and for [REDACTED] is [REDACTED] Inc.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If we can be of any further assistance, the undersigned can be reached at (617) 565-7855.

BARRY J. LATERMAN
Special Litigation Assistant